

**Notice of Allowability**

Application No.

10/001,937

Applicant(s)

RALPH ET AL.

Examiner

Anu Ramana

Art Unit

3733

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 5/22/06.
2. ☒ The allowed claim(s) is/are 10-13 and 17-22.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

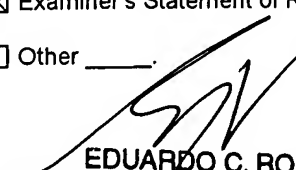
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____   |

  
 EDUARDO C. ROBERT  
 SUPERVISORY PATENT EXAMINER

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with the Attorney of Record, Daniel D. Ryan, on August 3, 2006. See attached Interview Summary Form.

The application has been amended as follows:

In claim 17, line 12: insert - - in the side wall - - after "opening" to provide correct antecedent basis and avoid confusion.

The following is an examiner's statement of reasons for allowance.

Regarding claim 10, none of the prior art either alone or in combination, discloses the method steps of: providing a cannula including a side wall, an opening in the side wall of the cannula, the opening extending partially about the side wall and being elongated along the axis of the cannula and a bone engaging structure on the distal region of the cannula spaced distally of the opening; placing the cannula in bone such that the bone engaging structure engages the cortical bone; inserting an expandable structure through the internal bore of the cannula into registration with the opening; and expanding the expandable structure through the opening in the side wall of the cannula into contact with cancellous bone.

Regarding claim 17, none of the prior art either alone or in combination, discloses the method steps of: providing a cannula including a side wall, an opening in the side wall of the cannula, the opening extending partially about the side wall and being elongated along the axis of the cannula and a distal opening in the distal region of the cannula communicating with an internal bore of the cannula; introducing a guide pin into bone; introducing the cannula into the bone by passing the guide pin through the distal opening and the internal bore; withdrawing the guide pin; inserting an expandable structure through the internal bore of the cannula into registration with the opening in

the side wall; and expanding the expandable structure through the opening in the side wall into contact with cancellous bone.

Regarding claim 21, none of the prior art either alone or in combination, discloses the method steps of: providing a cannula including a side wall, an opening in the side wall of the cannula, the opening extending partially about the side wall and being elongated along the axis of the cannula and an internal bore in the cannula terminating at the distal terminus; inserting an expandable structure through the internal bore of the cannula into registration with the opening in the side wall; expanding the expandable structure through the opening in the side wall into contact with cancellous bone to form a cavity; and flowing a volume of filling material into the cavity.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

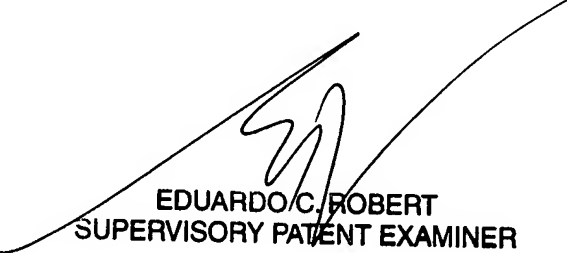
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR

August 3, 2006

*Amadha Ramana*

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER